No. _____

In the

Supreme Court of the United States

Timmy C. Riggle, Kelly A. Riggle, PETITIONERS

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Timmy C. Riggle
Petitioner

Kelly A. Riggle
Petitioner

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QUESTIONS PRESENTED

1. Whether the Circuit Court, in finding that the jurisdiction of the Court of Federal Claims is limited to actions for recovery of money damages has set aside the intent of Congress and functionally revised the meaning embodied in the plain language of the Tucker Act.

2. Whether the violation of regulatory procedures by administrative agencies of the federal government in violation of due process rights are in essence a violation of contractual property rights; and whether, given so, the just-compensation clause of the Fifth Amendment being applicable, jurisdiction of said violations fall under the Court of Federal Claims.

3. Whether the requirement that citizens must first pay any amount demanded by the IRS before they may gain access to a forum for justice, unless said citizens waive the right of appeal in a court of specialized jurisdiction (being the U.S. Tax Court) is a violation of human rights, treaty obligations, and constitutional rights of due process.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following are parties petitioning here and are appellants before the United States Court of Appeals for the Federal Circuit: Timmy C. Riggle and Kelly A. Riggle,

The following are respondents here and appellees below: The United States.

TABLE OF CONTENTS

QUESTIONS PRESENTED ii
PARTIES TO THE PROCEEDING iii
TABLE OF CONTENTS iv
TABLE OF AUTHORITIES v
OPINIONS BELOW 2
JURISDICTION 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2
STATEMENT 2
REASONS FOR GRANTING THE PETITION 9
CONCLUSION 11
APPENDIX A 12
APPENDIX B 20

TABLE OF AUTHORITIES

CASES

Flora v. United States 357 U.S. 63 3
Hollister v. Benedict Mfg. Co., 113 U.S. 59, 67 7
Hurley v. Kincaid, 285 U.S. 95, 104 8
Murray v. United States, 817 F.2d.1580 4
Shore v. United States, 9 F.3d 1524 3
Tonasket v. United States, 218 Ct. Cl. 709 3
United States v. Causby, 328 U.S. 256 7
United States v. Mitchell, 463 U.S. 206 5
United States v. Testan, 424 US 392 3
United States v. Williams, 514 U.S. 527 3
Yearsley v. Ross Construction Co., 309 U.S. 18, 21 8

STATUTES

26 U.S.C. § 6352(a)(1), 7422(a), ... 3
28 U.S.C. 1254 (1) 2
Tucker Act ..... ii, 1, 2, 3, 4, 5, 6, 7, 9, 20

CONSTITUTIONAL PROVISIONS

Fifth Amendment ..... ii, 2, 3, 5, 6, 10, 11

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully submit this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case, and in so doing, agree to clarify the meaning of the Tucker Act with regard to the subject-matter jurisdiction of the Court of Federal Claims; to make a fundamental determination regarding the protection of Constitutional rights as property rights; and whether requiring taxpayers to make payment to the IRS prior to gaining access to a forum for justice is itself a violation of a principal responsibility of the federal government.

OPINIONS BELOW

The disposition of the Federal Circuit Court of Appeals, decided per curium, is attached as Appendix A.

JURISDICTION

The disposition of the court of appeals was entered on May 4, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in relevant part that "... nor shall any person ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." The Tucker Act, which provides jurisdiction to the Court of Federal Claims for certain claims against the United States, is attached as Appendix B.

STATEMENT

1. The history of this case illuminates each of the three questions presented to this Court. In April 2004, the IRS sent a Notice of Deficiency to Plaintiffs, disallowing certain deductions on a prior tax return. Plaintiff's responded with a Sworn Notice in Affidavit form establishing, among other facts, that the Notice of Deficiency was not presented in compliance with regulatory requirements and established procedures. The IRS, by the doctrine of *nihil dicit*, defaulted on the opportunity to respond to the Sworn Notice and conceded to the facts as stated therein, including without limitation the violation of due process. Plaintiffs sued in the

Court of Federal Claims, pursuant to the Tucker Act, asking for damages in the amount of the alleged additional tax liability as compensation for the violation of their Fifth Amendment rights.

The Court of Federal Claims dismissed Plaintiff's suit for lack of subject-matter jurisdiction, stating that such jurisdiction is predicated on a money-mandating provision in substantive law. The Court of Appeals upheld the action of the lower court, stating that the jurisdiction of the lower court, being limited to actions for recovery of money damages, cannot adjudicate a tax dispute except only when the action is a tax refund. The appellate court, in citing Shore v. United States, 9 F.3d 1524, Tonasket v. United States, 218 Ct. Cl. 709, Flora v. United States 357 U.S. 63, United States v. Williams, 514 U.S. 527, and 26 U.S.C. § 6352(a)(1), 7422(a), specifically referred to case and statutory law which assume the said action is a tax refund. Not only is this *non-sequitur* with respect to this case, but the conclusion based on these citations evades the issue at hand and assumes as given that which is in contention.

In United States v. Testan, 424 US 392, this court acknowledged that the "Court of Claims has recognized that the Tucker Act confers upon it jurisdiction whenever the substantive right (to money damages) exists." This conclusion does not contradict the language of the Tucker Act, which in part confers jurisdiction on the Court of Claims for claims founded on any Act of Congress, and is not exclusive. This Court did not state '... jurisdiction *only* whenever the substantive right (to money damages) exists." An Act of Congress conferring a right to recover money damages in any particular situation is but a single type of right from a universe of rights Congress could confer in legislation. However, with regard to the Tucker Act, the

converse is neither true nor contemplated in the actual legislation. There is no language in the Tucker Act predicating jurisdiction of the Court of Claims on the existence of particular legislation or regulation. The Act does not specify that substantive law must first exist – it quite plainly states that the Court of Federal Claims shall have jurisdiction to render judgment upon *any claim* … founded either upon the Constitution, or any Act of Congress, … ." This is as true for rights to recover money damages as it is for any other right Congress may codify. In *Testan*, this Court went on to evaluate whether two federal statutes conferred substantive rights to money damages without formally stating whether jurisdiction of the Court of Claims is predicated on the pre-existence of substantive rights.

In Murray v. United States, 817 F.2d.1580, the appellate court held that "The courts have consistently held, however, that the Claim Court's jurisdiction is limited to such cases where the Constitution or a federal statute requires payment of money damages as compensation for the violation." This statement is the logical equivalent of substituting the concrete for the conceptual in the independent clauses of the Tucker Act, in a sense creating a "converse" Tucker Act in which it is mandated that jurisdiction of the Court of Federal Claims does not exist until an example of substantive law can be found which grants said jurisdiction through a money-mandating provision. This is exactly the mechanism that, according to the appellate court, must be in place before the Court of Claims can assert jurisdiction. If that is the case, there is no reason for the existence of the Tucker Act in its present form. A revised Tucker Act compatible with the above interpretation only need state in part that the Court of Claims has jurisdiction for claims based upon statutes which require payment in money damages. It is in essence an interpretation which demands of Congress specific legislation

defining what an acceptable grievance is, instead of a broadly interpreted statute based on the plain language of the Act which gives to the Court of Claims the responsibility for determining whether a particular claim has merit.

In United States v. Mitchell, 463 U.S. 206, this Court included an illuminating reference regarding the reason behind the creation of the Court of Claims: "... The measure was designed to 'give the people of the United States what every civilized nation of the world has already done – the right to go into the courts to seek redress against the Government for their grievances.'" Plaintiffs maintain that action by this Court is necessary to definitively guide the lower courts on the intent of Congress in passing the Tucker Act.

2. Plaintiffs maintain that even given a restrictive interpretation of the plain language of the Tucker Act in favor of defendants, this case brings to light very serious considerations regarding the applicability of two clauses of the Fifth Amendment. The first is in relation to violation of due process by administrative agencies, and by extension, all agencies, of the government and the necessary availability to all citizens for redress of such violations; the second is with regard to the applicability of the just-compensation clause for all due process violations.

First, in this case, the United States has admitted to violation of due process. The citizens of the United States have paid, through their taxes, for the development of extensive statutes and associated regulations and procedures governing the operation of all parts of government and their interaction with the citizenry. Such regulations and procedures cannot be regarded as optional, to be followed when convenient and

ignored when not. The due-process clause of the Fifth Amendment extends to all branches of the government, and all subordinate organizational elements thereof, and is the highest-order restraining influence with which the citizens may rest assured that their government may not act against them in an arbitrary manner. As a constitutional provision, by definition it is also the surest measure by which violations of regulations and procedures may be addressed. Any statutes, procedures, rules, or regulations inimical to the constitution are fundamentally null and void. Consequently, operation of any such statutes, procedures, rules or regulations in opposition to constitutional guarantees are also in violation of fundamental human rights and applicable treaty obligations.

If, as in this case, the IRS may operate unrestrained by it's own regulations and procedures, so then may any other regulatory or administrative agency. Why should the Environmental Protection Agency follow the rules specified for environmental assessments prior to the development of potentially ecologically sensitive areas? Why should the Department of Homeland Security be restrained by applicable law or regulation in combating terrorism? The enumerated list of potential abuses is infinite, yet all have one high-order restraining element in common: the due-process clause of the Fifth Amendment. If as cited above, the original Court of Claims was instituted as a means for the citizenry to seek redress for grievances committed by the government, and as Abraham Lincoln stated in his State of the Union message in 1861 with regard to creation of the Court of Claims, it is "as much the duty of the Government to render prompt justice against itself, in favor of the citizens, as it is to administer the same between private individuals," then under what possible interpretation of the Tucker Act does the Court of Federal Claims not have jurisdiction over grievances in the form of due-process violations by the government? Plaintiffs